

PSC NO 3
Focal Communications Corporation of New York
Initial Effective Date 06/05/03

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SECTION 2: REGULATIONS

2.1 Undertaking of the Company

2.1.1 Scope

The Company undertakes to furnish communications service pursuant to the terms of this tariff in connection with one-way and/or two-way information transmission between points within the State of New York.

Customers and users may use services and facilities provided under this tariff to obtain access to services offered by other service providers. The Company is responsible under this tariff only for the services and facilities provided hereunder, and it assumes no responsibility for any service provided by any other entity that purchases access to the Company network in order to originate or terminate its own services, or to communicate with its own customers.

2.1.2 Shortage of Equipment or Facilities

- A) The Company reserves the right to limit or to allocate the use of existing facilities, or of additional facilities offered by the Company, when necessary because of lack of facilities, or due to some other cause beyond the Company's control.
- B) The furnishing of service under this tariff is subject to the availability on a continuing basis of all the necessary facilities and is limited to the capacity of the Company's facilities as well as facilities the Company may obtain from other carriers to furnish service from time to time as required at the sole discretion of the Company.

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2.1 Undertaking of the Company (cont'd.)

2.1.3 Terms and Conditions

- A) Service is provided on the basis of a minimum period of at least one month, 24-hours per day. For the purpose of computing charges in this tariff, a month is considered to have 30 days.
- B) Customers may be required to enter into written service orders which shall contain or reference a specific description of the service ordered, the rates to be charged, the duration of the services, and the terms and conditions in this tariff. Customers will also be required to execute any other documents as may be reasonably requested by the Company.
- C) Except as otherwise stated in this Tariff, at the expiration of the initial term specified in each Business Service Order, or in any extension thereof, service shall continue on a month to month basis at the then current rates unless terminated by either party upon 30 days written notice. Any termination shall not relieve the Customer of its obligation to pay any charges incurred under the service order and this tariff prior to termination. The rights and obligations which by their nature extend beyond the termination of the term of the service order shall survive such termination.
- D) In any action between the parties to enforce any provision of this tariff, the prevailing party shall be entitled to recover its legal fees and court costs from the non-prevailing party in addition to other relief a court may award.

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2.1 Undertaking of the Company (cont'd.)

2.1.3 Terms and Conditions (cont'd.)

- E) Service may be terminated upon written notice to the Customer if:
- 1) the Customer is using the service in violation of this tariff; or
 - 2) the Customer is using the service in violation of the law.
- F) This tariff shall be interpreted and governed by the laws of the State of New York without regard for its choice of laws provision.

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2.1 Undertaking of the Company (cont'd.)

2.1.4 Liability of the Company

- A) Except as otherwise stated in this Tariff, the liability of the Company for damages arising out of the furnishing of its Services, including but not limited to mistakes, omissions, interruptions, delays, or errors, or other defects, representations, or use of these services or arising out of the failure to furnish the service, whether caused by acts or omission, shall be limited to the extension of allowances for interruption as set forth in Section 2.7. The extension of such allowances for interruption shall be the sole remedy of the Customer and the sole liability of the Company. The Company will not be liable for any direct, indirect, incidental, special, consequential, exemplary or punitive damages to Customer as a result of any Company service, equipment or facilities, or the acts or omissions or negligence of the Company's employees or agents.
- B) The Company shall not be liable for any delay or failure of performance or equipment due to causes beyond its control, including but not limited to: acts of God, fire, flood, explosion or other catastrophes; any law, order, regulation, direction, action, or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over the Company, or of any department, agency, commission, bureau, corporation, or other instrumentality of any one or more of these federal, state, or local governments, or of any civil or military authority; national emergencies; insurrections; riots; wars; unavailability of rights-of-way or materials; or strikes, lock-outs, work stoppages, or other labor difficulties.
- C) The Company shall not be liable for:
 - 1) any act or omission of any entity furnishing to the Company or to the Company's Customers facilities or equipment used for interconnection with Network Services; or
 - 2) for the acts or omissions of common carriers or warehousemen.
- D) The Company shall not be liable for any damages or losses due to the fault or negligence of the Customer or due to the failure or malfunction of equipment or facilities provided by the Customer or third parties.

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2.1 Undertaking of the Company (cont'd.)

2.1.4 Liability of the Company (cont'd.)

- E) The Company does not guarantee nor make any warranty with respect to installations it provides for use in an explosive atmosphere. The Customer indemnifies and holds the Company harmless from any and all loss, claims, demands, suits, or other action, or any liability whatsoever, whether suffered, made, instituted, or asserted by any other party or person(s), and for any loss, damage, or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal presence, condition, location, or use of any installation so provided. The Company reserves the right to require each Customer to sign an agreement acknowledging acceptance of the provisions of this Section 2.1.4(E) as a condition precedent to such installations.
- F) The Company is not liable for any defacement of or damage to Customer premises resulting from the furnishing of services or equipment on such premises or the installation or removal thereof, unless such defacement or damage is caused by negligence or willful misconduct of the Company's agents or employees.
- G) The Company shall be indemnified, defended and held harmless by the Customer from and against all loss, liability, damage and expense, including reasonable counsel fees, due to claims for libel, slander, invasion of privacy or infringement of copyright in connection with the material transmitted over the Company's facilities; and any other claim resulting from any act or omission of the Customer or patron(s) of the Customer relating to the use of the Company's facilities.
- H) The entire liability for any claim, loss, damage or expense from any cause whatsoever shall in no event exceed sums actually paid the Company by the Customer for the specific services in the month in which the event giving rise to the liability occurred. No action or proceeding against the Company shall be commenced more than one year after the event giving rise to the liability occurred.
- I) THE COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.

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2.1 Undertaking of the Company (cont'd.)

2.1.4 Liability of the Company (cont'd.)

- J) The Company shall indemnify, defend, and hold harmless the Customer from and against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees, for any injury to persons or property, and any interruption of, interference to, or other defect in any service provided by the Company to any third party, if such injury, interruption, interference, or other defect was not caused by any negligent or intentional act or omission of the Customer or any of its officers, employees, agents, invitees, or contractors.

2.1.5 Notification of Service-Affecting Activities

The Company will provide the Customer reasonable notification of service-affecting activities that may occur in normal operation of its business. Such activities may include, but are not limited to, equipment or facilities additions, removals or rearrangements and routine preventative maintenance. Generally, such activities are not specific to an individual Customer but affect many Customers' services. No specific advance notification period is applicable to all service activities. The Company will work cooperatively with the Customer to determine the reasonable notification requirements. With some emergency or unplanned service-affecting conditions, such as an outage resulting from cable damage, notification to the Customer may not be possible.

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2.1 Undertaking of the Company (cont'd.)

2.1.6 Provision of Equipment and Facilities

- A) The Company shall use reasonable efforts to make available services to a Customer on or before a particular date, subject to the provisions of and compliance by the Customer with, the regulations contained in this tariff. The Company does not guarantee availability by any such date and shall not be liable for any delays in commencing service to any Customer.
- B) The Company shall use reasonable efforts to maintain only the facilities and equipment that it furnishes to the Customer. The Customer may not, nor may the Customer permit others to, rearrange, disconnect, remove, attempt to repair, or otherwise interfere with any of the facilities or equipment installed by the Company, except upon the written consent of the Company.
- C) The Company may substitute, change or rearrange any equipment or facility at any time and from time to time, but shall not thereby alter the technical parameters of the service provided the Customer.
- D) Equipment the Company provides or installs at the Customer Premises for use in connection with the services the Company offers shall not be used for any purpose other than that for which the Company provided it.
- E) The Customer shall be responsible for the payment of service charges as set forth herein for visits by the Company's agents or employees to the Premises of the Customer when the service difficulty or trouble report results from the use of equipment or facilities provided by any party other than the Company, including but not limited to the Customer.
- F) The Company shall not be responsible for the installation, operation, or maintenance of any Customer provided communications equipment. Where such equipment is connected to the facilities furnished pursuant to this tariff, the responsibility of the Company shall be limited to the furnishing of facilities offered under this tariff and to the maintenance and operation of such facilities. Subject to this responsibility, the Company shall not be responsible for:
 - 1) the transmission of signals by Customer provided equipment or for the quality of, or defects in, such transmission; or

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2.1 Undertaking of the Company (cont'd.)

2.1.6 Provision of Equipment and Facilities (cont'd.)

- 2) the reception of signals by Customer-provided equipment; or
 - 3) network control signaling where such signaling is performed by Customer-provided network control signaling equipment.
- G) Except as otherwise indicated, customer-provided station equipment at the Customer's premises for use in connection with this service shall be so constructed, maintained and operated as to work satisfactorily with the facilities of the Company.

2.1.7 Non-routine Installation

At the Customer's request, installation and/or maintenance may be performed outside the Company's regular business hours or in hazardous locations. In such cases, charges based on cost of the actual labor, material, or other costs incurred by or charged to the Company will apply. If installation is started during regular business hours but at the Customer's request extends beyond regular business hours into time periods including, but not limited to, weekends, holidays, and/or night hours, additional charges may apply.

2.1.8 Special Construction

Subject to the agreement of the Company and to all of the regulations contained in this tariff, special construction of facilities may be undertaken on a reasonable efforts basis at the request of the Customer. Special construction is that construction undertaken:

- A) where facilities are not presently available and there is no other requirement for the facilities so constructed;
- B) of a type other than that which the Company would normally utilize in the furnishing of its services;
- C) over a route other than that which the Company would normally utilize in the furnishing of its services;
- D) in a quantity greater than that which the Company would normally construct;

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2.1 Undertaking of the Company (cont'd.)

2.1.8 Special Construction (cont'd.)

- E) on an expedited basis;
- F) on a temporary basis until permanent facilities are available;
- G) involving abnormal costs; or
- H) in advance of its normal construction.

2.1.9 Ownership of Facilities

Title to all facilities provided in accordance with this tariff remains in the Company, its agents or contractors. Equipment furnished by the Company on the premises of a subscriber is the property of the Company.

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2.2 Prohibited Uses

- A) The services the Company offers shall not be used for any unlawful purpose or for any use as to which the Customer has not obtained all required governmental approvals, authorizations, licenses, consents and permits.
- B) The Company may require applicants for service who intend to use the Company's offerings for resale and/or for shared use to file a letter with the Company confirming that their use of the Company's offerings complies with relevant laws and New York Public Service Commission regulations, policies, orders, and decisions.
- C) The Company may require a Customer to immediately shut down its transmission of signals if said transmission is causing interference to others.
- D) A customer, joint user, or authorized user may not assign, or transfer in any manner, the service or any rights associated with the service without the written consent of the Company. The Company will permit a Customer to transfer its existing service to another entity if the existing Customer has paid all charges owed to the Company for regulated communications services. Such a transfer will be treated as a disconnection of existing service and installation of new service, and non-recurring installation charges as stated in this tariff will apply.

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2.3 Obligations of the Customer

2.3.1 General

The Customer shall be responsible for:

- A) the payment of all applicable charges pursuant to this tariff;
- B) damage to or loss of the Company's facilities or equipment caused by the acts or omissions of the Customer; or the noncompliance by the Customer, with these regulations; or by fire or theft or other casualty on the Customer Premises, unless caused by the negligence or willful misconduct of the employees or agents of the Company;
- C) providing at no charge, as specified from time to time by the Company, any needed personnel, equipment space and power to operate Company facilities and equipment installed on the premises of the Customer, and the level of heating and air conditioning necessary to maintain the proper operating environment on such premises;
- D) obtaining, maintaining, and otherwise having full responsibility for all rights-of-way and conduit necessary for installation of fiber optic cable and associated equipment used to provide Communications Services to the Customer from the cable building entrance or property line to the location of the equipment space described in Section 2.3.1(C). Any and all costs associated with the obtaining and maintaining the rights-of-way described herein, including the costs of altering the structure to permit installation of the Company-provided facilities, shall be borne entirely by, or may be charged by the Company to, the Customer. The Company may require the Customer to demonstrate its compliance with this section prior to accepting an order for service.
- E) providing a safe place to work and complying with all laws and regulations regarding the working conditions on the premises at which Company employees and agents shall be installing or maintaining the Company's facilities and equipment. The Customer may be required to install and maintain Company facilities and equipment within a hazardous area if, in the Company's opinion, injury or damage to the Company employees or property might result from installation or maintenance by the Company. The Customer shall be responsible for identifying, monitoring, removing and disposing of any hazardous material (e.g. friable asbestos) prior to any construction or installation work;

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2.3 Obligations of the Customer (cont'd.)

2.3.1 General (cont'd.)

- F) complying with all laws and regulations applicable to, and obtaining all consents, approvals, licenses and permits as may be required with respect to, the location of Company facilities and equipment in any Customer premises or the rights-of-way for which Customer is responsible under Section 2.3.1(D); and granting or obtaining permission for Company agents or employees to enter the premises of the Customer at any time for the purpose of installing, inspecting, maintaining, repairing, or upon termination of service as stated herein, removing the facilities or equipment of the Company;
- G) not creating or allowing to be placed any liens or other encumbrances on the Company's equipment or facilities; and
- H) making Company facilities and equipment available periodically for maintenance purposes at a time agreeable to both the Company and the Customer. No allowance will be made for the period during which service is interrupted for such purposes.

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2.3 Obligations of the Customer (cont'd.)

2.3.2 Liability of the Customer

- A) The Customer will be liable for damages to the facilities of the Company and for all incidental and consequential damages caused by the negligent or intentional acts or omissions of the Customer, its officers, employees, agents, invitees, or contractors where such acts or omissions are not the direct result of the Company's negligence or intentional misconduct.
- B) To the extent caused by any negligent or intentional act of the Customer as described in (A), preceding, the Customer shall indemnify, defend and hold harmless the Company from and against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees, for (1) any loss, destruction or damage to property of any third party, (2) the death of or injury to persons, including, but not limited to, employees or invitees of either party, and (3) any liability incurred by the Company to any third party pursuant to this or any other tariff of the Company, or otherwise, for any interruption of, interference to, or other defect in any service provided by the Company to such third party.
- C) The Customer shall not assert any claim against any other customer or user of the Company's services for damages resulting in whole or in part from or arising in connection with the furnishing of service under this Tariff including but not limited to mistakes, omissions, interruptions, delays, errors or other defects or misrepresentations, whether or not such other customer or user contributed in any way to the occurrence of the damages, unless such damages were caused solely by the Company. Nothing in this Tariff is intended either to limit or to expand Customer's right to assert any claims against third parties for damages of any nature other than those described in the preceding sentence.
- D) Neither subscriber's landlord nor landlord's officers, agents or employees, the building management or any party in interest to the lease under which subscriber occupies space in the building shall have any liability to subscriber arising from the provision or operation of the services and service-related equipment referred to herein, or the interruption on or failure thereof from any cause whatsoever.

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2.4 Customer Equipment and Channels

2.4.1 General

A User may transmit or receive information or signals via the facilities of the Company. The Company's services are designed primarily for the transmission of voice-grade telephonic signals, except as otherwise stated in this tariff. A User may transmit any form of signal that is compatible with the Company's equipment, but the Company does not guarantee that its services will be suitable for purposes other than voice-grade telephonic communication except as specifically stated in this tariff.

2.4.2 Station Equipment

- A) Terminal equipment on the User's Premises and the electric power consumed by such equipment shall be provided by and maintained at the expense of the User. The User is responsible for the provision of wiring or cable to connect its terminal equipment to the Company Point of Connection.
- B) The Customer is responsible for ensuring that Customer-provided equipment connected to Company equipment and facilities is compatible with such equipment and facilities. The magnitude and character of the voltages and currents impressed on Company-provided equipment and wiring by the connection, operation, or maintenance of such equipment and wiring shall be such as not to cause damage to the Company-provided equipment and wiring or injury to the Company's employees or to other persons. Any additional protective equipment required to prevent such damage or injury shall be provided by the Company at the Customer's expense.

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2.4 Customer Equipment and Channels (cont'd.)

2.4.3 Interconnection of Facilities

- A) Any special interface equipment necessary to achieve compatibility between the facilities and equipment of the Company used for furnishing Communications Services and the channels, facilities, or equipment of others shall be provided at the Customer's expense.
- B) Communications Services may be connected to the services or facilities of other communications carriers only when authorized by and in accordance with, the terms and conditions of the tariffs of the other communications carriers which are applicable to such connections.
- C) Facilities furnished under this tariff may be connected to customer provided terminal equipment in accordance with the provisions of this tariff. All such terminal equipment shall be registered by the Federal Communications Commission pursuant to Part 68 of Title 47, Code of Federal Regulations; and all User-provided wiring shall be installed and maintained in compliance with those regulations.
- D) Users may interconnect communications facilities that are used in whole or in part for interstate communications to services provided under this tariff only to the extent that the user is an "end user" as defined in Section 69.2(m), Title 47, Code of Federal Regulations (1992 edition).

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2.4 Customer Equipment and Channels (cont'd.)

2.4.4 Inspections

- A) Upon suitable notification to the Customer, and at a reasonable time, the Company may make such tests and inspections as may be necessary to determine that the Customer is complying with the requirements set forth in Section 2.4.2(B) for the installation, operation, and maintenance of Customer-provided facilities, equipment, and wiring in the connection of Customer-provided facilities and equipment to Company-owned facilities and equipment.
- B) If the protective requirements for Customer-provided equipment are not being complied with, the Company may take such action, as it deems necessary to protect its facilities, equipment, and personnel. The Company will notify the Customer promptly if there is any need for further corrective action. Within ten days of receiving this notice, the Customer must take this corrective action and notify the Company of the action taken. If the Customer fails to do this, the Company may take whatever additional action is deemed necessary, including the suspension of service, to protect its facilities, equipment and personnel from harm.

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2.5 Customer Deposits and Advance Payments

2.5.1 Advance Payments

To safeguard its interests, the Company may require a Customer to make an advance payment before services and facilities are furnished. The advance payment shall not exceed an amount equal to the non-recurring charge(s) and one month of estimated monthly usage charges. In addition, where special construction is involved, the advance payment may also include an amount equal to the estimated non-recurring charges for the special construction and recurring charges (if any) for a period to be set between the Company and the Customer. The advance payment will be credited to the Customer's initial bill. An advance payment may be required from Business Customers in addition to a deposit.

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2.5 Customer Deposits and Advance Payments (cont'd)

2.5.2 Deposits

- A) To safeguard its interests, the Company may require the Customer to make a deposit to be held as a guarantee for the payment of charges. A deposit does not relieve the Customer of the responsibility for the prompt payment of bills on presentation. The deposit will not exceed an amount equal to:
- 1) two month's charges for a service or facility which has a minimum payment period of one month; or
 - 2) the charges that would apply for the minimum payment period for a service or facility which has a minimum payment period of more than one month; except that the deposit may include an additional amount in the event that a termination charge is applicable.
- B) A deposit may be required in addition to an advance payment.
- C) When a service or facility is discontinued, the amount of a deposit, if any, will be applied to the Customer's account and any credit balance remaining will be refunded. Before the service or facility is discontinued, the Company may, at its option, return the deposit or credit it to the Customer's account. If the amount of the deposit is insufficient to cover the balance due to the Customer's account, the Company retains the right to collect any amounts owing after the deposit has been applied plus any costs related to the collection of any remaining balance.
- D) Deposits held will accrue simple interest at a rate specified by the New York Public Service Commission without deductions for any taxes on such deposits. Interest will not accrue on any deposit after the date on which reasonable effort has been made to return it to the Customer.

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2.6 Payment Arrangements

2.6.1 Payment for Service

The Customer is responsible for the payment of all charges for facilities and services furnished by the Company to the Customer. The Customer is responsible for payment of any sales, use, gross receipts, excise, access or other local, state and federal taxes, charges or surcharges (however, designated) (excluding taxes on the Company's net income) imposed on or based upon the provision, sale or use of Network Services.

2.6.2 Billing and Collection of Charges

The Customer is responsible for payment of all charges incurred by the Customer or other users for services and facilities furnished to the Customer by the Company.

- A) Non-recurring charges are due and payable within 30 days after the date of the invoice.
- B) The Company shall present invoices for monthly Recurring Charges as well as usage charges to the Customer for the preceding billing period.
- C) When service does not begin on the first day of the month, or end on the last day of the month, the charge for the fraction of the month in which service was furnished will be calculated on a pro rate basis. For this purpose, every month is considered to have 30 days.
- D) Billing of the Customer by the Company will begin on the Service Commencement Date, which is the day on which the Company notifies the Customer that the service or facility is available for use, except that the Service Commencement Date may be postponed by mutual agreement of the parties, or if the service or facility does not conform to standards set forth in this tariff or the Service Order. Billing accrues through and includes the day that the service, circuit, arrangement or component is discontinued.
- E) If any portion of the payment is received by the Company after the date due, or if any portion of the payment is received by the Company in funds which are not immediately available upon presentment, then a late payment penalty shall be due to the Company. The late payment penalty shall be the portion of the payment not received by the date due, multiplied by a late factor. The late factor shall be the lesser of:

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2.6.2 Billing and Collection of Charges (cont'd.)

- 1) a rate of 1.5 percent per month; or
 - 2) the highest interest rate which may be applied under New York state law for commercial transactions.
- F) The Customer will be assessed a charge of twenty dollars (\$20.00) for each check submitted by the Customer to the Company which a financial institution refuses to honor. C
- G) Customers have up to 90 days (commencing 5 days after remittance of the bill) to initiate a dispute over charges or to receive credits.
- H) If service is disconnected by the Company in accordance with Section 2.6.3 following and later restored, restoration of service will be subject to all applicable installation charges.

2.6.3 Discontinuance of Service for Cause

- A) Upon nonpayment of any amounts owing to the Company, the Company may, by giving 24 hours prior written notice to the Customer, discontinue or suspend service without incurring any liability.
- B) Upon violation of any of the other material terms or conditions for furnishing service the Company may, by giving 24 hours prior notice in writing to the Customer, discontinue or suspend service without incurring any liability if such violation continues during that period.
- C) Upon condemnation of any material portion of the facilities used by the Company to provide service to a Customer or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair, the Company, by notice to the Customer, may discontinue or suspend service without incurring any liability.
- D) Upon the Customer's insolvency, assignment for the benefit of creditors, filing for bankruptcy or reorganization, or failing to discharge an involuntary petition within the time permitted by law, the Company may immediately discontinue or suspend service without incurring any liability.

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2.6.3 Discontinuance of Service for Cause (cont'd.)

- E) Upon any governmental prohibition or required alteration of the services to be provided or any violation of an applicable law or regulation, the Company may immediately discontinue service without incurring any liability.
- F) In the event of fraudulent use of the Company's network, the Company may without notice suspend or discontinue service. The Customer will be liable for all related costs as set forth in Section 2.9 of this tariff. The Customer will also be responsible for payment of any reconnection charges.
- G) Upon the Company's discontinuance of service to the Customer under Section 2.6.3(A) or 2.6.3(B), the Company, in addition to all other remedies that may be available to the Company at law or in equity or under any other provision of this tariff, may declare all future monthly and other charges which would have been payable by the Customer during the remainder of the term for which such services would have otherwise been provided to the Customer to be immediately due and payable (discounted to present value at six percent).
- H) The Customer is responsible for providing adequate access lines to enable the Company to terminate all Toll Free Service calls to the Customer's telephone equipment. Should the Customer have insufficient access lines on which to terminate Toll Free Service calls, the Company reserves the right to request the Customer to add additional lines for call terminations. If, after 90 days, the Customer has not made the requested change, the Company, without incurring any liability, reserves the right to terminate the Customer's Toll Free Service, with 30 days written notice.

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2.6 Payment Arrangements (cont'd.)

2.6.5 Cancellation of Application for Service

- A) Applications for service are non-cancelable unless the Company otherwise agrees. Where the Company permits the Customer to cancel an application for service prior to the start of service or prior to any special construction, no charges will be imposed except for those specified below.
- B) Where, prior to cancellation by the Customer, the Company incurs any expenses in installing the service or in preparing to install the service that it otherwise would not have incurred, a charge equal to the costs the Company incurred, less net salvage, shall apply, but in no case shall this charge exceed the sum of the charge for the minimum period of services ordered, including installation charges, and all charges others levy against the Company that would have been chargeable to the Customer had service begun (all discounted to present value at six percent).
- C) Where the Company incurs any expense in connection with special construction, or where special arrangements of facilities or equipment have begun, before the Company receives a cancellation notice, a charge equal to the costs incurred, less net salvage, applies. In such cases, the charge will be based on such elements as the cost of the equipment, facilities, and material, the cost of installation, engineering, labor, and supervision, general and administrative expense, other disbursements, depreciation, maintenance, taxes, provision for return on investment, and any other costs associated with the special construction or arrangements.
- D) The special charges described in 2.6.5(A) through 2.6.5(C) will be calculated and applied on a case-by-case basis.

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2.6 Payment Arrangements (cont'd.)

2.6.6 Changes in Service Requested

If the Customer makes or requests material changes in circuit engineering, equipment specifications, service parameters, premises locations, or otherwise materially modifies any provision of the application for service, the Customer's installation fee shall be adjusted accordingly.

2.6.7 Backbilling Procedure

- A) The Company will not include on subscriber's bill any previously unbilled charge for service furnished prior to twenty-four months immediately preceding the date of the bill, except as specified below. C
- B) Subscriber's bill may include charges for service furnished up to five months prior to the date of the bill for:
- 1) collect calls
 - 2) credit card calls
 - 3) third party calls
 - 4) "error file" calls (calls which cannot be billed due to the unavailability of complete billing information to the Company).
- C) Subscriber's bill may include charges for service furnished up to one and a half (1 1/2) years prior to the date of the bill in circumstances involving toll fraud.

2.6.8 Establishment and Re-establishment of Credit

The Company reserves the right to examine the credit record of all applicants and subscribers. A subscriber whose service has been discontinued for nonpayment of bills will be required to pay any unpaid balance due to the Company and to re-establish credit.

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2.7 Allowances for Interruptions in Service

Interruptions in service, which are not due to the negligence of, or noncompliance with the provisions of this tariff by, the Customer or the operation or malfunction of the facilities, power or equipment provided by the Customer, will be credited to the Customer as set forth in 2.7.1 for the part of the service that the interruption affects.

2.7.1 Credit for Interruptions

- A) Focal will grant a one (1) day credit for fixed charges for service allowance for any service interruption due to failure in Focal's facility. Focal will waive (1) month's fixed charges for any service interruption lasting more than five (5) hours in a billing month due to failure in Focal's facility. Credits will be payable only if the Customer has called in a trouble report within 3 days of the occurrence.
- B) A service interruption will be deemed to have occurred only if service becomes unusable to Customer as a result of failure of Focal's facility, equipment or personnel used to provide the service in question, and only where the interruption is not the result of: (i) the negligence or acts of Customer or its agents; (ii) the failure or malfunction of non-Focal equipment or systems; (iii) circumstances or causes beyond the control of Focal; or (iv) a service interruption caused by service maintenance, alteration or implementation. Such credits will be granted only if: (a) Customer affords Focal full and free access to Customer's premises to make appropriate repairs, maintenance, testing, etc.; and (b) Customer does not continue to use the service on an impaired basis.
- C) The foregoing states Customer's sole remedy for service interruption under the Agreement and in no event shall Focal be liable for any direct, indirect, incidental, consequential, punitive or special damages to Customer as result of any Focal service, equipment, facilities, person or system provided or utilized under this Agreement.
- D) A credit allowance will be given for interruptions of 15 minutes or more. Credit allowances shall be calculated as follows:

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2.7.2 Limitations on Allowances

No credit allowance will be made for:

- A) interruptions due to the negligence of, or noncompliance with the provisions of this tariff by, the Customer, authorized user, joint user, or other common carrier providing service connected to the service of the Company;
- B) interruptions due to the negligence of any person other than the Company, including but not limited to the Customer or other common carriers connected to the Company's facilities;
- C) interruptions due to the failure or malfunction of non-Company equipment;
- D) interruptions of service during any period in which the Company is not given full and free access to its facilities and equipment for the purpose of investigating and correcting interruptions;
- E) interruptions of service during a period in which the Customer continues to use the service on an impaired basis;
- F) interruptions of service during any period when the Customer has released service to the Company for maintenance purposes or for implementation of a Customer order for a change in service arrangements; and
- G) due to circumstances or causes beyond the control of Company; and
- H) that occur or continue due to the Customer's failure to authorize replacement of any element of special construction.

2.7.3 Cancellation For Service Interruption

Cancellation or termination for service interruption is permitted only if any circuit experiences a single continuous outage of 8 hours or more or cumulative service credits equaling 16 hours in a continuous 12-month period. The right to cancel service under this provision applies only to the single circuit which has been subject to the outage or cumulative service credits.

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2.8 Cancellation of Service/Termination Liability

If a Customer cancels a Service Order or terminates services before the completion of the term for any reason whatsoever other than a service interruption (as defined in Section 2.7.1), Customer agrees to pay to Company termination liability charges, which are defined below. These charges shall become due and owing as of the effective date of the cancellation or termination and be payable within the period set forth in Section 2.6.2.

Upon cancellation or termination of service hereunder, Customer will make service available for removal, which will be accomplished by the Company in a careful and reasonably expeditious fashion. If Customer does not make the service or equipment available for removal by the Company, then in addition to all other remedies at law or equity available to the Company, all obligations of Customer will remain in force and effect until removal is accomplished. Customer will continue to pay charges for services during such period.

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2.8 Cancellation of Service/Termination Liability (cont'd.)

2.8.1 Termination Liability

Customer's termination liability for cancellation of service shall be equal to:

- A) all unpaid Non-Recurring charges reasonably expended by Company to establish service to Customer, plus;
- B) any disconnection, early cancellation or termination charges reasonably incurred and paid to third parties by Company on behalf of Customer, plus;
- C) all Recurring Charges specified in the applicable Service Order for the balance of the then current term discounted at 8% per year.
- D) the reasonable removal of all equipment specially ordered to service customers, including: crating, shipping, handling and insurance charges to Chicago, IL if Focal can utilize the Equipment.

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2.9 Customer Liability for Unauthorized Use of the Network

2.9.1 Unauthorized Use of the Network

Unauthorized use of the Network occurs when a person or entity that does not have actual, apparent, or implied authority to use the Network, obtains the Company's services provided under this tariff.

2.9.2 Liability for Calling Card Fraud

- A) The Customer is liable for the unauthorized use of the Network obtained through the fraudulent use of a Company calling card, provided that the unauthorized use occurs before the Company has been notified.
- B) A Company calling card is a telephone calling card issued by the Company at the Customer's request, which enables the Customer or user(s) authorized by the Customer to place calls over the Network and to have the charges for such calls billed to the Customer's account.
- C) The Customer must give the Company written notice that an unauthorized use of the Company calling card has occurred or may occur as a result of loss, theft or other reasons.
- D) The Customer is responsible for payment of all charges for services furnished to the Customer or to users authorized by the Customer to use service provided under this tariff. This responsibility is not changed due to any use, misuse, or abuse of the Customer's service or Customer-provided equipment by third parties, the Customer's employees, or the public.
- E) The Customer is liable for all charges incurred as a result of unauthorized use of the Network, including incidental and consequential damages. In addition, the Customer is responsible for payment of any charges related to the suspension and/or termination of service and any charges for reconnection of service.

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2.9 Customer Liability for Unauthorized Use of the Network (cont'd.)

2.9.3 Liability for Credit Card Fraud and Other Unauthorized Use

- A) The Customer is liable for the unauthorized use of the Network obtained through the fraudulent use of a credit card, provided: (1) the card is an accepted credit card, and (2) the unauthorized use occurs before the Company has been notified. An accepted credit card is any credit card that a cardholder has requested or applied for and received, or has signed, used, or authorized another person to use to obtain credit. Any credit card issued as a renewal or substitute in accordance with this paragraph is an accepted credit card when received by the cardholder.
- B) The liability of the Customer for unauthorized use of the Network by credit card fraud will not exceed the lesser of \$50 or the amount of money, property, labor, or services obtained by the unauthorized user before notification to the Company.
- C) The Customer must give the Company written notice that an unauthorized use of the credit card has occurred.

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2.10 Use of Customer's Service by Others

2.10.1 Resale and Sharing

Any service provided under this tariff may be resold to or shared with other persons at the option of Customer, subject to compliance with any applicable laws or New York Public Service Commission regulations governing such resale or sharing. The Customer remains solely responsible for all use of services ordered by it or billed to its telephone number(s) pursuant to this tariff, for determining who is authorized to use its services, and for notifying the Company of any unauthorized use.

2.10.2 Joint Use Arrangements

Joint use arrangements will be permitted for all services provided under this tariff. From each joint use arrangement, one member will be designated as the Customer responsible for the manner in which the joint use of the service will be allocated. The Company will accept orders to start, rearrange, relocate, or discontinue service only from the Customer. Without affecting the Customer's ultimate responsibility for payment of all charges for the service, each joint user shall be responsible for the payment of the charges billed to it.

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2.11 Transfers and Assignments

Neither the Company nor the Customer may assign or transfer its rights or duties in connection with the services and facilities provided by the Company without the written consent of the other party, except that the Company may assign its rights and duties:

- A) to any subsidiary, parent company or affiliate of the Company; or
- B) pursuant to any sale or transfer of substantially all the assets of the Company; or
- C) pursuant to any financing, merger or reorganization of the Company.

2.12 Notices and Communications

- A) The Customer shall designate on the Service Order an address to which the Company shall mail or deliver all notices and other communications, except that Customer may also designate a separate address to which the Company's bills for service shall be mailed.
- B) The Company shall designate on the Service Order an address to which the Customer shall mail or deliver all notices and other communications, except that Company may designate a separate address on each bill for service to which the Customer shall mail payment on that bill.
- C) All notices or other communications required to be given pursuant to this tariff will be in writing. Notices and other communications of either party, and all bills mailed by the Company, shall be presumed to have been delivered to the other party on the third business day following placement of the notice, communication or bill with the U.S. Mail or a private delivery service, prepaid and properly addressed, or when actually received or refused by the addressee, whichever occurs first.
- D) The Company or the Customer shall advise the other party of any changes to the addresses designated for notices, other communications or billing, by following the procedures for giving notice set forth herein.

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2.13 Operator Services Rules

A) The Company will enforce the following operator service rules.

A provider of intrastate operator assisted communications services must:

- 1) identify itself at the time the end-user accesses its services;
- 2) upon request, quote all rates and charges for its services to the end-user accessing its system;
- 3) arrange to have posted in plain view at each telephone location which automatically accesses the operator service provider's network and where its services are made available to the public or transient end-users:
 - a) the operator service provider's name and address;
 - b) bill and service dispute calling information including the operator service provider's dispute resolution phone number;
 - c) clear and specific instructions informing the end-user how to access a local exchange telephone company operator as an alternative available to the end-user; and
 - d) notice concerning any and all amounts to be billed by the operator services provider on behalf of any host location or third party which will appear on the operator service provider's bill for services rendered.
- 4) in instances when the provider is unable to complete the call and it requires transfer to another telephone corporation which may affect the rates and charges applicable to the telephone bill, inform the caller of the transfer and its possible effect on the applicable rates and charges, before any charges are incurred; and
- 5) in the case of such transfer, the telephone corporation or provider to which the call is transferred shall identify itself and inform the caller of the transfer's effect on the applicable rates and charges, before any charges are incurred.

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2.13 Operator Services Rules (cont'd.)

B) The Company will comply with the following provisions:

- 1) Providers of intrastate operator assisted communications services shall not take any action or enter into any arrangement which restricts end-user selection among competing interexchange telephone corporations or end users access to competing providers of intrastate operator assisted communications services, or pay any commissions or other compensation to any entity engaged in such action or arrangement.

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2.14 New York Relay Service

A) General

The Company will provide access to the New York Relay Center for New York Relay Service, pursuant to an agreement with Sprint Communications of New York, Inc. The service permits telephone communications between hearing and/or speech impaired individuals who must use Telecommunications device for the Deaf (TDD) or a Teletypewriter (TTY) and individuals with normal hearing and speech. Calls made through the Relay Service will be routed the Relay Center in Clifton Park, New York. At the Center, Communications Assistants establish the calls between the calling and called parties and then act as the "translation" point. The Relay Center can be reached by dialing an 800 number. A specific 800 number has been designated for both hearing impaired and non-hearing impaired customers to use.

B) Regulations

1. Only intrastate calls can be completed using the New York Relay Service.
2. The New York Relay Center is operational 24 hours a day, seven days a week.
3. Charges for calls through the Relay Center will be billed as direct distance dialed (DDD) from the point of origination to the point of termination. The actual routing of the call is independent from what is billed.
4. Calls made using the Relay Service may be billed to a third number only if that number is within New York State. Calls may also be billed to calling cards issued by the Company or Sprint.
5. The following calls mad not be placed using the Relay Service:
 - a. Calls to informational recordings and group bridging services;
 - b. Calls to time or weather recording messages;

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2.14 New York Relay Service (cont'd)

B) Regulations (cont'd)

5. (cont'd)

- c. Operator handled conference service and other teleconference calls.
- d. Station sent paid calls from coin telephones.

C) Liability

Under the agreement reached with Sprint Communications of New York, Inc., Sprint has complete control over the provision of the service except for the facilities provided directly by the Company. In addition to other provisions of this tariff dealing with liability, in the absence of gross negligence or willful misconduct on the part of the Company, the Company shall not be liable for and the customer agrees, to release, defend and hold the Company harmless for, all damages, whether direct, incidental or consequential, whether suffered, made, instituted, or asserted by the customer or by any other person, for any loss or destruction of any property, whatsoever whether covered by the customer or others, or for any personal injury or death of, any person.

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2.15 Gross Revenues Surcharge and MTA Surcharge

The following surcharges apply to local telephone services.

Gross Revenues Surcharge

Period	Services Provided for Resale*	IntraLATA Toll & RCP Service	All Other Services
10/01/1998	.7557%	3.8870%	4.1149%
1/1/2000	.7557%	3.0919%	3.3198%
7/1/2000	.3764%	2.8273%	2.9405%

MTA Surcharge

Period	Services Provided for Resale*	IntraLATA Toll & RCP Service	All Other Services
10/1/1998	.1277%	.6890%	.73%

*To qualify for this rate, resellers must either be included in the list of resellers that the New York State Department of Taxation and Finance publishes called "Publication 41, Treatment of Sales for Resale under Sec. 186(e) of the Tax Law," or must possess and provide to the underlying carrier a copy of its Certificate of Public Convenience and Necessity obtained from the New York State Public Service Commission.

2.16 New York City Utility Surcharge

2.35% Rate is assessed on gross telecommunications receipts.

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2.17 Chatline Services

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When chatline services are provided, the provisions of this Tariff apply in addition to all regulations, rates and charges set forth in the appropriate sections of this Tariff.

By the orders in cases 98-C-1273 and 98-C-1479 of the New York Public Service Commission, the following terms and conditions concerning content-type services will be enforced:

- (1) the NXX code for chatline services will be blockable
- (2) access to the code will be limited to the LATA in which the code was assigned

Information Providers and other entities that violate the above regulations are subject to the penalties set forth in Section 2.1.3 (E) and (F) of this Tariff, which provide for termination of service.

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